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Decision 01-01-037 January 18, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion into Monitoring Performance of Operations Support Systems.	Rulemaking 97-10-016 (Filed October 9, 1997)
Order Instituting Investigation on the Commission's Own Motion into Monitoring Performance of Operations Support Systems.	Investigation 97-10-017 (Filed October 9, 1997)

INTERIM OPINION ON PERFORMANCE INCENTIVES

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Summary

The Telecommunications Act of 1996 (TA96 or the Act) was a major step in the process of opening previously monopolistic local telephone service markets to competition. To foster competition, the act requires the incumbent local exchange carriers (ILECs) to provide competing carriers access to any necessary ILEC infrastructure, including the incumbents' operations support systems (OSS). OSS includes pre-ordering, ordering, provisioning, maintenance, billing, and other functions necessary to providing various telephony services. For competition to occur, the competitive local exchange carriers (CLECs) must be able to access these services in the same manner as the ILEC.

For example, for pre-ordering, a CLEC must be able to access customer information relevant to the service being ordered, so that the CLEC can tell its customers what options they have. For ordering, a CLEC needs to be sure that the ordering process for its customers takes no more time than for ILEC customers. Similarly, for provisioning, a CLEC needs to be sure that the time the ILEC takes to actually install or provide a new telephone service for CLEC customers is no longer than for ILEC customers. Delays or inaccuracies in these and the other OSS functions could discourage potential customers from doing business with the competitors.

Under its authority to implement the Act, the Federal Communications Commission (FCC) has strongly encouraged that regulatory remedies be established to ensure ILEC OSS performance does not present barriers to competition. While not an outright prerequisite for FCC approval of Regional Bell Operating Companies' (RBOC) applications to provide in-region interLATA service under § 271, the FCC has indicated that such applications must be in the public interest. In its evaluation of the public interest, the FCC states that, "the

fact that a BOC will be subject to performance monitoring and enforcement mechanisms would constitute probative evidence that the BOC will continue to meet its section 271 obligations and that its entry would be consistent with the public interest."[1] As a consequence, we will establish a performance remedies plan to identify and prevent or remove any barriers. The three critical steps for any performance remedies plan are performance measurement, performance assessment, and the corrective actions necessary if performance is deemed harmful to competition.

The California Public Utilities Commission (Commission or CPUC) has established performance measures in a parallel proceeding in this docket. Our decision today establishes an interim performance assessment plan. We have created a set of procedures for assessing the performance measurement results to identify competitive barriers. In effect, we have set forth a self-executing decision model that applies barrier-identifying criteria to the performance measurement results. A self-executing plan is one that requires no further review and no new proceedings. Explicit, objective, data-based standards are established that automatically calculate and determine the existence of "competitive barrier" performance. Statistical tests identify barriers when ILEC performance to its own customers can be compared to ILEC performance to CLEC customers. Explicit performance levels, called benchmarks, identify barriers when there is no comparable ILEC performance.

This decision model now enables us to proceed to the final step of the remedies plan, establishing the incentives that will be tied to any deficient

[1] *Bell Atlantic New York Order* ("FCC BANY Order"), 15 FCC Rcd at 3971, ¶ 429.

performance identified by the model. The overall goal of the plan will be to ensure compliance with the FCC's directive that OSS performance shall provide competitors a true opportunity to compete.

Background

On October 9, 1997, the Commission instituted this formal rulemaking proceeding and investigation to achieve several goals regarding Pacific Bell's (Pacific) and Verizon California, Inc.'s (Verizon CA)[2] OSS infrastructure. One objective of this docket (the OSS OII/OIR) is to assess the best and fastest method of ensuring compliance if the respective OSS of the ILECs do not show improvement in implementation or meet determined standards of performance. Another related objective is to provide appropriate compliance incentives under Section 271 of TA96, which applies solely to Pacific[3], for the prompt achievement of OSS improvements.

To further these specific objectives, the ILECs and a number of interested CLECs participated in a series of meetings jointly conducted through the OSS OII/OIR proceeding and the 271 collaborative process[4]. In October 1998, a group

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[2] Verizon CA was previously named GTE California Incorporated. Hereafter, Pacific and Verizon CA will be referred to collectively, as the ILECs.

[3] As a Bell Operating Company (BOC), Section 271 specifically applies to Pacific.

[4] From July through mid-August 1998, Pacific, AT&T Communications of California Inc. (AT&T), MCI WorldCom (MCI W), Sprint Communications, Electric Lightwave, Inc., ICG Telecom Group, Inc., Covad Communications (Covad), MediaOne Telecommunications of California, Inc., Cox California Telecom, LLC, Northpoint Communications, California Cable Television Association, and staff entered into a collaborative process and jointly worked on developing solutions to the flaws in Pacific's 1998 draft 271 application. Verizon CA observed one collaborative meeting on penalties, but otherwise did not participate. (Verizon CA Response to Motion to Accept

Footnote continued on next page

of the interested parties filed joint comments setting forth their various positions on the issues discussed during the meetings. Following a pre-workshop conference in January 1999, the assigned Administrative Law Judge (ALJ) and the Telecommunications Division staff (staff) convened a 7-day technical workshop[5] on the respective performance incentive plans of Pacific and the participating CLECs. Pacific and the CLECs filed concurrent opening briefs on March 22, 1999, and concurrent reply briefs on April 5, 1999.

Pursuant to ALJ Ruling, Verizon CA filed its proposal on incentives for compliance with performance measures on May 3, 1999. The CLECs responded to the proposal on May 11, 1999. On July 12-14, 1999, the ALJ and staff convened a technical workshop on Verizon CA's performance incentive plan in relation to the CLECs' plan[6]. The parties filed concurrent opening briefs on July 28, 1999, and concurrent reply briefs on August 4, 1999. On August 12, 1999, Verizon CA petitioned to have submission set aside and supplemental comments accepted. The CLECs responded to the petition on August 27, 1999.

On November 22, 1999, the assigned Commissioner noted in a ruling (the ACR) that staff and its technical consultants had advised him that the performance incentive plans that the parties had submitted were significantly flawed. The ACR set forth the framework of a performance remedies plan that it encouraged Pacific, Verizon CA and the CLECs to analyze and comment upon

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Joint Comments regarding Report on Performance Incentives, footnote 2 at 2 (October 20, 1998)).

[5] February 5, 8-11, and 23-24, 1999.

[6] The CLECs submitted their plan in both the Pacific and Verizon CA portions of the proceeding.